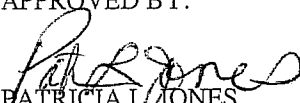


☒ R/W MANUAL CHANGE  
(1993 Edition)

**RWMC- 155**

☐ PROCEDURAL HANDBOOK  
(1984 Edition)

RWPH-\_\_\_\_-\_\_\_\_-\_\_\_\_  
TRANSMITTAL#\_\_\_\_

TITLE: LOCAL PROGRAMS	APPROVED BY:  PATRICIA L. JONES	DATE ISSUED: <b>DEC 21 2005</b>
	Page 1 of 4	
SUBJECT AREA: CHAPTER 17 - LOCAL PROGRAMS	ISSUING UNIT: OFFICE OF APPRAISALS AND LOCAL PROGRAMS	
SUMMARY OF CHANGES: Revises Sections 17.03.00.00, 17.04.00.00, and 17.06.00.00; deletes Exhibit 17-EX-13; adds new Exhibit 17-EX-20; and updates Tables of Contents for sections and exhibits.		

### **PURPOSE**

This manual change updates Sections 17.03.00.00, 17.04.00.00, and 17.06.00.00. Also, Section 17.04.00.00 was reorganized to clarify and update.

Where applicable, sections were renumbered and general typographical errors were corrected.

### **PROCEDURES**

- |                                       |  |
|---------------------------------------|--|
| 17.03.01.00                           | Clarifies Local Agency Right of Way Activities on Federal-Aid Projects are subject to oversight.   |
| 17.03.02.01                           | Reference to Exhibit 17-EX-4 is deleted.   |
| 17.03.03.01<br>through<br>17.03.13.05 | Sections deleted completely. Reference is made to the use of the Local Assistance Procedures Manual, Chapter 13 - Right of Way, at <a href="http://www.dot.ca.gov/hq/LocalPrograms/public.htm">http://www.dot.ca.gov/hq/LocalPrograms/public.htm</a> . |
| 17.04.01.00                           | Section expanded and retitled to describe local agency projects on the State Highway System.   |
| 17.04.01.01                           | Clarifies Locally Funded Projects.   |
| 17.04.01.02                           | Modifies description of Sales Tax/Measure Projects.  |
| 17.04.01.03                           | Modifies description of Partnership Projects.  |
| 17.04.01.04                           | Adds language to Section to clarify Privately Funded Projects.   |

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Previous number 17.04.01.06	Section deleted completely. Addressed Private Toll Roads.
Previous number 17.04.01.07	Section deleted completely. To be moved to Section 17.07 Cooperative Agreements. (Retain deleted manual section for reference until 17.07 is revised.)
Previous number 17.04.02.01	Section deleted completely. Information moved to Section 17.04.01.00.
17.04.02.03	Heading change. Support Budget for Special Funded Projects.
Previous number 17.04.02.05	Heading deleted and section was incorporated with 17.04.02.03.
17.04.02.06	Language added to clarify Section on FHWA Role.
17.04.02.07	Language added to clarify Section on NEPA/CEQA Requirements.
17.04.02.08	Clarifies Section.
17.04.03.02	Clarifies requirement to submit Categorical Exemption package as part of request for Hardship and Protection.
17.04.03.03	Formerly numbered Section 17.04.03.08. Reordered for clarification.
17.04.03.04	Clarifies Section.
17.04.03.05	Clarifies Section.
17.04.03.06	New Section on Early Acquisition.
17.04.03.08	Clarifies Section on Donations.
17.04.03.09	Renumbered from Section 17.04.03.07.
Previous number 17.04.03.08	Section deleted completely. Moved to Section 17.04.03.03.
Previous number 17.04.03.09	Section deleted completely. Moved and incorporated into Section 17.04.03.03.
Previous number 17.04.03.10	Section deleted completely.

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17.04.04.01	Clarification.
17.04.04.02	Clarification and change “Agreements” to “Contracts.”
Previous number 17.04.05.02	Section deleted completely. Moved to Section 17.07. (Retain deleted manual section for reference until 17.07 is revised.)
17.04.05.02	Section retitled and simplified.
17.04.05.04	Renumbered Section.
17.04.05.05	Changes “Prequalified” to “Qualified.”
17.04.06.01	Changes “Accept Certification” to “Approve Certification.”
17.04.06.02	References to monitoring removed.
17.04.07.01	Heading change.
17.04.07.02	Reference to Chapter 7, “Appraisals,” of R/W Manual is added.
17.04.07.03	Clarification of Waiver of Dual Appraisals.
Previous number 17.04.07.04	Heading deleted and section was incorporated with 17.04.07.03.
17.04.07.04	Clarification of Access Control. Reference to Chapter 26 and Chapter 27 of the PDPM and Chapter 16 of R/W Manual is added.
17.04.07.05	Addition of reference to Chapter 26 of PDPM.
17.04.08.01	Heading change.
17.04.08.02	Clarification of acquisition settlements by LPAs.
17.04.09.00	Clarification of Condemnation.
17.04.09.01	New Section on Local Agencies hearing Resolutions of Necessity.
17.04.09.02	New Section on Notice of Intent.
17.04.09.03	New Section on Resolution of Necessity.
17.04.09.04	New Section on Request to Appear.
17.04.09.05	New Section on Reviews Prior to Appearance before California Transportation Commission.

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17.04.09.06	New Section on Reviews Prior to Appearance before City Council or County Board of Supervisors.
17.04.09.07	Clarification of Department Condemnation Responsibilities.
17.04.09.08	Heading change. Clarification of LPA Condemnation Responsibilities.
17.04.09.09	Heading change.
Previous number 17.04.09.05	Section deleted completely. Moved to Section 17.07, "Cooperative Agreements." (Retain deleted manual section for reference until 17.07 is revised.)
17.04.12.01	Clarification of Project Certification.
17.06.00.00	Title changed to "Consultant Qualifications and Selection Criteria."
17.06.01.01	Reference to Exhibit 17-EX-13 is deleted. The material has been incorporated in Section 17.06.02.01.
17.06.02.01	Consultant qualifications are more fully explained and information from Exhibit 17-EX-13 is incorporated.
17.06.03.01	Reference to monitoring is changed to oversight.
17.06.04.01	Reference to monitoring is changed to oversight.
17.06.04.03	Reference is added to indicate all appraisals of parcels to be acquired for a project on the State Highway System are subject to formal review.

**EFFECTIVE DATE**

Immediately.

**MANUAL IMPACT**

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

**REVISION SUMMARY**

<b><u>Chapter</u></b>	<b><u>Remove Old Pages</u></b>	<b><u>Insert New/Revised Pages</u></b>
	Remove the following in its entirety:	Replace with the following in its entirety:
17 - Sections	Table of Contents (REV 9/2004) 17.03.00.00 (6/2002) 17.04.00.00 (6/2002) 17.06.00.00 (6/2002)	Table of Contents (REV 12/2005) 17.03.00.00 (REV 12/2005) 17.04.00.00 (REV 12/2005) 17.06.00.00 (REV 12/2005)
17 - Exhibits	Table of Contents 6/2002 17-EX-13 (6/2002) - <b>DELETE</b> -----	Table of Contents REV 12/2005 ----- 17-EX-20 (NEW 12/2005)

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## CHAPTER 17

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## **17.03.00.00 - FEDERAL-AID LOCAL ASSISTANCE PROJECTS (OFF-SYSTEM PROJECTS)**

### **17.03.01.00      General**

For a local federal-aid project, the Local Public Agency (LPA) is responsible for the conception, planning, programming, environmental investigation, design, right of way (including the cost estimate), choice of consultants, the Right of Way Certification, construction, and maintenance. The LPA must ensure that its staff, consultants and contractors comply with all applicable state and federal laws, regulations, and procedures in developing, implementing, and constructing its projects. All Right of Way activities will be subject to Caltrans oversight.

### **17.03.02.01      Funding and Programming - Roles of Metropolitan Planning Organizations and Regional Transportation Planning Agencies**

Transportation planning involving the funding for local projects begins at the regional level. The plans are developed by Regional Transportation Planning Agencies (RTPAs), Metropolitan Planning Organizations (MPOs), and County Transportation Commissions (CTCs). The results of these efforts are incorporated in the Regional Transportation Improvement Plan (RTIP).

As noted above, these steps are shown on the flow chart entitled “*Simplified Statewide and Regional Planning and Programming Cycle*,” (Exhibit 17-EX-4).

The RTIP is submitted to the Department and FHWA for approval and to the CTC for funding. RTIP projects, which involve federal funding, are included in an FTIP. Before an LPA project can be eligible for federal participation, it must be in an approved FTIP. This is the LPA’s responsibility.

The CTC encourages the Department to assist regional agencies responsible for preparing a federal TIP, recognizing that federal regulations require that projects in counties with urbanized areas be included in the FTIP in order to qualify for federal funding.

After inclusion of the project in an FTIP and funding is programmed in the RTIP, the LPA should then work with the District Local Assistance Engineer (DLAE) before proceeding with project implementation. The DLAE will coordinate all the necessary authorizations from FHWA. As noted above, the primary Department responsibility for the administration of federal-aid local assistance projects rests with the DLAE.

**This section of the Right of Way Local Programs Manual was previously dedicated to Federal-Aid Local Assistance Projects (a.k.a. Local Streets and Roads projects) that are NOT on the State Highway System.**

**Instead of updating this section, we will direct you to the Local Assistance Procedures Manual, Chapter 13 - Right of Way, which was released on July 9, 2004 and is available at <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>.**

**Chapter 13 includes 60 pages of valuable information about the right of way process that, indeed, will assist the local agency in completing the right of way portion of their transportation project.**

**Additionally, each Caltrans District Office has a staff of knowledgeable right of way agents who will be happy to assist you with all of your right of way needs. This includes any information regarding Utility Relocations (see Chapter 14 of the Local Assistance Procedures Manual) which is part of the right of way process. We encourage you to take advantage of this valuable resource.**

**For information about Local Agency projects that are ON the State Highway System, or any portion thereof, please see the following section in this Manual, Section 17.04.00.00.**

## **17.04.00.00 – LOCAL PUBLIC AGENCY PROJECTS ON THE STATE HIGHWAY SYSTEM**

### **17.04.01.00      Local Public Agency Projects on the State Highway System - Background**

All Local Public Agency (LPA) projects on the State Highway System (SHS), within the existing or proposed right of way, are subject to the requirements of the Right of Way Manual (R/W Manual).

Projects having as little as \$1 in federal funding in any phase of the project are classified as Federal-Aid projects. Projects with no Federal dollars in any phase of the project are not Federal-Aid projects. Both types of projects on the SHS are subject to the provisions of Department policies and procedures, including the R/W Manual.

The Department is the owner-operator of the SHS. After construction is complete and the project is accepted, the Department remains responsible for operations and maintenance and retains tort liability, which explains why there is such a comprehensive level of involvement. All SHS projects must be developed in accordance with Department standards and practices, including planning, design, right of way acquisition, and construction.

Background and guidelines for these projects are found in Deputy Directive 23 (DD-23), “*Developing Special Funded Projects*,” dated June 28, 1994. (See Exhibit 17-EX-7.)

Prior to a Local Public Agency (LPA) beginning work on any project on the SHS, there must be either an executed Cooperative Agreement (when project costs exceed \$1 million, or when there is Right of Way involvement), or an Encroachment Permit must have been issued (when total project costs are less than \$1 million and there is no Right of Way involvement).

### **17.04.01.01      Locally Funded Projects**

Locally funded projects are projects on the SHS sponsored by an LPA. The funding sources may include impact mitigation fees charged to private developers, funds derived from assessment districts, contributions from private developers, the LPA share of gas tax funds, federal funds, and local property taxes.

### **17.04.01.02      Sales Tax/Measure Projects**

Sales Tax Measure projects are local agency projects where the LPA is the Sales Tax Measure Authority. Sales Tax Measure projects are identified in an approved Sales Tax Measure Expenditure Plan or Strategic Plan, are funded 50% or more from local sales tax revenues, and have no funding in the State Programming documents. Sales Tax Measure projects on the SHS require a Cooperative Agreement.

As the owner-operator of the SHS, the Department is *usually* responsible for performing and funding all project development work through the environmental document and project approval phase. The sponsor is responsible for performing and funding project development, right of way, and construction at its expense. If the Department is unable to meet the sponsor’s schedule, the sponsor may assume the responsibility for the preparation of all project development work with the appropriate oversight to be provided by Department. The responsibilities of the Department and the Measure Authority must be addressed in the Cooperative Agreement.

If requested by the sponsor, the Department may perform some of the services for which the sponsor is responsible on a reimbursed basis—if Department has sufficient reimbursed budget authority. When the Department does work on a reimbursed basis, an Agreement is required to provide for the reimbursement. (See Section 17.04.05.03, “Capital Support Reimbursed Work,” and Section 17.07.00.00, “Cooperative Agreements.”)

#### **17.04.01.03**      **Partnership Projects**

Either the Department or an LPA sponsors this type of project. There is a variety of funding sources, which may include tax measure proceeds, local, state or federal monies, and direct contributions to the local agency from developers. The Department may be only a financial contributor, but may also be responsible for certain aspects of the projects such as construction management. Roles, responsibilities, and funding obligations must be defined in one or more Cooperative Agreements, regardless of the amount contributed by the project sponsor or the Department. (For additional detail, see Section 17.07.00.00, “Cooperative Agreements.”)

#### **17.04.01.04**      **Privately Funded Projects**

Owners or developers of property adjacent to or near the SHS can use their own funds to construct, repair, or improve any portion of the highway. Some of these projects are undertaken to mitigate impacts or to improve access to the development. Privately funded projects are defined as projects on the SHS, which are sponsored by a private, nonpublic entity and have no funding in a State programming document.

When a new, privately funded project is proposed, a decision must be made in designating the project sponsor. The Department strongly encourages LPAs to sponsor privately funded projects to demonstrate community acceptance of the project and to improve coordination with other local agencies. If a proposed privately funded project is sponsored by an LPA, it will then be processed as a locally funded project.

If an LPA does not sponsor the project, the Department will work directly with the private sponsor. As the owner-operator responsible for assessing the impact of new projects on the existing SHS, the Department is responsible for the preparation of the PSR at Department’s expense. It is the responsibility of the private sponsor to provide suitable engineering data, as well as technical and financial information needed for the Department to prepare the PSR. The private sponsor may prepare and submit a draft PSR, at its own expense, to expedite the project development process. The sponsor is responsible for performing all subsequent project development, right of way, and construction activities, with the Department providing oversight at the private project sponsor’s expense.

A Highway Improvement Agreement accompanied by an Escrow Agreement, if applicable, will be required for all privately funded projects. The private sponsor must follow the Department’s Manual for projects on the SHS.

#### **17.04.01.05**      **Public Toll Roads**

These projects use locally generated funds to build toll roads, which will ultimately be part of the SHS. The toll revenues are used to reimburse the costs in constructing the facilities.

#### **17.04.02.01**      **Project Estimates**

One of the initial objectives in successfully developing special funded projects is obtaining an accurate cost estimate for the Right of Way portion of the project. The reliability of estimates for project costs at every stage in the development process is necessary for sound project management. For special funded projects where the Department is responsible for preparation of the Right of Way Data Sheet, the Region/District’s R/W Estimating units are often called on to provide cost estimates with little lead time and with only very preliminary studies available. As the project design is progressively refined, alignment changes routinely occur with widespread and consequential impacts. Accordingly, when establishing right of way widths, initial consideration should always be given to the need for maintenance access, drainage, noise barriers, material sites, construction work areas, etc.

Estimates, even at an early stage, are often viewed as a Department financial commitment by LPAs that use the data to develop their project's budget. In the case of tax measure initiatives, project sponsors do not have the option of raising additional funds if there are cost increases and are consequently left with a serious shortfall of funds and/or the need to reduce the number or size of their projects during the life of the tax measure. This can become a very critical and sensitive issue. It is therefore very important that estimates are made with care and are based on the best information available at the time.

When LPAs are preparing their own project estimates, the Right of Way Local Programs Coordinator should provide assistance whenever possible. For additional detail, refer to Chapter 4, "Estimating," in this Manual.

#### **17.04.02.02**      **STIP Requirements**

Special funded projects, prior to authorization to proceed with project development, should have an approved PSR, environmental clearance and, as applicable, be included in the STIP. During development of each STIP cycle, the Regional Transportation Improvement Plans (RTIPs) should incorporate locally funded projects where a concept has been agreed on and there is a firm funding commitment by a resolution or other documentation from the LPA even if they are not included in the STIP. Special funded project costs in the STIP include all Department project support costs for each of the following four components:

1. All permits/environmental studies;
2. Preparation of the PS&E;
3. Right of Way Acquisition; AND
4. Construction/construction management, engineering (including surveys and inspections).

If the Department and an LPA agree, they may recommend that a new special funded project will be jointly funded. In this case, the LPA will nominate its share in the RTIP and the Department will nominate the interregional share in the ITIP.

#### **17.04.02.03**      **Support Budget for Special Funded Projects**

All special funded projects on the SHS must be included in the District's database, whether PMCS or XPM, even if they are not included in the STIP. The Department *or* LPA Data Sheet is the source from which resources are entered into PMCS via the COST screens.

**NOTE:** Failure to include all special funded projects will result in the Local Programs' oversight PYs being underallocated.

PMCS and XPM databases must also be regularly updated to reflect the project's current status, e.g., workload, production, or scheduling changes. This is crucial to ensure the oversight PYs are properly budgeted.

In preparing a support budget for work on Special Funded projects, a Region/District must plan for activity in two general areas:

1. The Region/District's support budget must include effort performed in preparation of the PSR, the environmental document, oversight, project certification, and general advice and assistance for LPAs undertaking the projects. These estimates must be considered in light of the Region/District's experience with acquiring agencies as to the degree of oversight and assistance necessary to certify projects. The Region/District must properly flag LPA projects so that budget personnel can identify the resources needed. The projects' PMCS Cost Screen should reflect full right of way effort as though Right of Way was doing the work. As a general rule of thumb, Right of Way oversight or contract administration is estimated at 10% of total PY effort. The Right of Way Coordinator must maintain close liaison with the unit developing special funded projects, whether it is the DLAE or Project Development staff to obtain the latest estimates of the type and number of projects expected.
2. In Regions/Districts where reimbursed work is performed, the costs must be specifically budgeted before the work may be undertaken.

#### **17.04.02.04**      **Project Report/Project Study Report (PR/PSR)**

The Project Report (PR) and Project Study Report (PSR) are essentially feasibility studies, which develop both the project's scope and schedule. These documents identify alternate proposals for the project and contain preliminary analyses of the costs, impacts, and requirements. They also detail a crucial element: whether the project results in significant capacity improvement, which is defined as either an increase in capacity more than two miles long or the construction of a major freeway-to-freeway interchange. The combined PR/PSR was designed for noncomplex, noncontroversial projects.

For tax measure projects, Right of Way participates in the preparation of the PSR as part of the project development team and by producing a R/W Data Sheet which contains the estimated R/W capital outlay requirements for the project, as well as an estimate of the amount and type of work to be performed.

#### **17.04.02.05**      **Final Design/Plans, Specifications, and Estimate (PS&E)**

The final design and PS&E must be approved by the Department and must conform to Department standards and practices.

#### **17.04.02.06**      **FHWA Role - Mixed Funding**

Special funded projects can have a mixture of funding, including both State and federal as part of the LPA's share. When projects utilize federal funding for right of way acquisition or construction or when modifications are made to an Interstate freeway in which FHWA has already participated, FHWA approval is required. Dependent on the funding mixture, the approval mechanism is often an Authorization to Proceed (E76). In instances where there is no federal funding, the approval mechanism is the approval of the NEPA document. All projects on the NHS must be approved by FHWA.

#### **17.04.02.07**      **NEPA/CEQA**

All special funded projects must comply with the California Environmental Quality Act (CEQA). Any project where Federal-aid funds are used or where modifications are made to an Interstate freeway in which FHWA has already participated, must comply with the National Environmental Policy Act (NEPA).

#### **17.04.02.08**      **Hazardous Waste Studies**

All transportation projects on the SHS require the investigation and avoidance, if possible, of any exposure to hazardous waste products. Examples of hazardous waste include petroleum products, pesticides, organic compounds, heavy metals, or other compounds that are injurious to human health or the environment. All projects, which include the purchase of right of way, excavation, or the demolition/modification of structures, will require at a minimum an Initial Site Assessment to determine if any known or potential hazardous waste exists within the project area. The Department's hazardous waste policy and procedures are set forth more fully in Chapter 7, "Appraisals," Chapter 8, "Acquisition," and Chapter 12, "Clearance and Demolition," of this Manual, and Chapter 18 of the *Project Development Procedures Manual*.

#### **17.04.03.01**      **Advance Right of Way Activities**

In order to avoid loss of federal funds as well as ensure project approval, regular right of way acquisition activities (a written offer) must not be conducted by an LPA on a proposed project prior to completion of the environmental process. The LPA may, however, commence "regular" project appraisals if the following has occurred: (1) the draft environmental document must have been circulated, (2) the public hearing process completed, (3) a preferred alternative has been approved, and (4) the project is not controversial. This policy is necessary to avoid any possible allegations of such acquisitions predetermining the proposed project location and design alternatives.

In all other instances, preliminary regular right of way activities that can be performed are those necessary for completion of the environmental impact assessment and preparation for public hearings. If the project does not meet the criteria stated above, "regular" appraisals cannot commence nor should the property owner be contacted. Activities that can be performed are limited to obtaining general appraisal information for later appraisals as well as work on relocation assistance studies and preliminary utility relocation efforts up to, but not including, the issuance of the Notice to Owner to Relocate.

#### **17.04.03.02**      **Advance Acquisitions**

Some limited acquisitions may take place prior to completion of environmental and hearing requirements. These acquisitions may include the following, which are also discussed in the Acquisition Chapter in this Manual. It is emphasized that each type of acquisition described below may only take place prior to environmental approval and location selection if:

- The LPA shows compliance with applicable acquisition rules. (For details, refer to Chapter 8, "Acquisition," in this Manual.)
- Advance acquisitions (hardship and protection) shall not influence the environmental process for the project, including decisions relative to the need to construct the project or the selection of specific alternative locations.
- A Categorical Exemption package along with a request for either a hardship or protection acquisition has been submitted to FHWA and approved.



#### **17.04.03.03**      **Advance Acquisition - Procedures**

LPAs making such acquisitions are encouraged to use Department procedures to consider and evaluate advance acquisition requests in conformance with State and Federal criteria. All decisions to acquire under these guidelines should be thoroughly documented. Also if the environmental and route location processes have not been completed, the advance acquisition must not influence the environmental assessment of the proposed project, nor can they influence the decision relative to the need to construct the project or the selection of a specific location.

All advance acquisitions must comply with Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

A request to acquire hardship or protection acquisitions prior to completion of environmental clearance requirements must be authorized in advance by FHWA's regional office if FHWA has already approved the project with the proposed acquisitions. This prior FHWA approval for the advance acquisition is required even if the right of way costs will be paid with the LPA's own funds and the project will later be programmed for federal-aid construction costs.

Close cooperation and communication between the Region/District R/W Coordinator, the DLAE, and the LPA are necessary in order to ensure that eligible costs are neither prematurely submitted for reimbursement nor overlooked entirely when they in fact become eligible for reimbursement.

#### **17.04.03.04**      **Hardship Acquisition**

A hardship is defined as a situation where unusual personal circumstances accrue to an owner of property and are aggravated or perpetuated by reason of a pending transportation facility purchase and cannot be solved by the owner without acquisition by the LPA. See Chapter 5, "Corridor Preservation, Hardship, and Protection," of this Manual. FHWA retains approval of hardship acquisitions.

#### **17.04.03.05**      **Protection Acquisition**

A protection acquisition is one required to prevent development of property in the path of a proposed project route that would cause higher acquisition and construction costs and relocation of people and businesses if deferred. FHWA retains approval of protection acquisitions. See Chapter 5, "Corridor Preservation, Hardship, and Protection," of this Manual.

#### **17.04.03.06**      **Early Acquisition**

Refer to Exhibit 17-EX-20 for details.

#### **17.04.03.07**      **Dedications**

A dedication is the setting aside of property for public use, without compensation, as a condition prior to the granting of a permit to construct, a zoning variance, or a conditional use permit, etc. The project's timing, i.e., when the additional right of way is required for the highway improvements, dictates whether the Department or the LPA (usually City or County) accepts title to the parcel at the time of dedication. The property owner will normally initiate the request to the LPA that triggers the dedication. Valid dedications can however be accepted throughout the project development process.

There are a number of situations in which dedications occur. Some examples are as follows:

1. When the additional right of way is required for highway improvements that are being constructed in conjunction with a developer's project.
2. When LPAs require the dedication of property rights in conformance with the agency's adopted General Plan. In these cases, in exchange for permits, variances, or land use changes, LPAs require the dedication of property to the setback or the ultimate right of way line as reflected in their General Plan.

#### **17.04.03.08**      **Donations (Contributions)**

A donation is the voluntary conveyance of property, without compensation, for the improvement of a current or future public project. Donations of right of way may be accepted from an owner/owners if owner/owners do so voluntarily and are advised of their right to compensation. The owner/owners must be provided with an appraisal of the real property to be acquired, or a waiver valuation, if appropriate, unless the owner/owners release the LPA from such obligation. The waiver of just compensation and/or release from obligation to provide an appraisal must be documented. Exhibit 17-EX-8 has been approved for this purpose and should be used whenever donations are offered and accepted. The offer to donate should originate with the property owner and must not in any way result from an act of coercion or suggestion by the LPA.

Property owners who offer to donate should be advised of their right to reserve airspace development rights as set forth in Streets and Highways Code 104.12, which states if leased property was provided for SHS purposes through donation or at less than fair market value, then the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired.

Donations may be made at any time during the development of a project. However, any document executed to effect a donation prior to approval of the environmental clearance of the project shall clearly state that:

1. All alternatives to a proposed alignment will be studied and considered.
2. Acquisition of property shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and
3. Any property acquired by donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after completion of the environmental clearance and public hearing, if required.

Once the environmental and route location process requirements are satisfied and regular Right of Way activity is under way, donations may be accepted by the acquiring agency as part of their regular acquisition program, provided the restrictions referred to above are followed.

#### **17.04.03.09**      **Donations (Credit for Local Match)**

The fair market value of donations can be considered eligible as local matching funds whenever federal funds participate.

#### **17.04.03.10**      **Acquisition of Excess**

To avoid involvement in an excess lands disposal program, Regions/Districts as a general rule should not acquire or accept title to future excess land in the Department's name in conjunction with the acquisition of the rights of way on special funded projects. If the excess is acquired, the acquisition should be via a second deed vesting the excess land portion in the LPA. Where right of way lines are indefinite, excess may be acquired in the Department's name with the understanding that all excess land acquired by the state will be deeded back to the LPA for their disposal upon completion of the highway construction.

#### **17.04.03.11**      **Sale or Exchange of Excess Property**

Special funded projects may involve the acquisition of property that becomes excess to Department needs as a result of interchanges being removed or reconfigured, ramps being relocated, etc.

Streets and Highways Code Section 118 permits the Department to sell or exchange right of way when it is determined that the property is no longer needed for highway purposes. On these projects, in the furtherance of our partnership approach, it is the Department's policy to cooperate with the LPA sponsor in making possible the exchange of state excess for property acquired by the LPA.

A valuation of the property involved will be completed by the Department's Right of Way staff. The value of the property acquired for state highway improvements should normally be of equal or greater value than the value of state excess property to be exchanged. If the state excess has greater value, the entities should normally pay the state the cost difference. However, the value of the state highway facility improvements financed by the entity may be factored into exchange values if it is in the best interest of the state.

The real property exchange should be considered during early stages of project development whenever possible and addressed in the appropriate project development document (PSR, PSR/PR, etc.). Terms and conditions of the property exchange should be included in the Cooperative Agreement. The property exchange is subject to CTC approval.

**NOTE:** Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess real property.

#### **17.04.04.01**      **Utility Relocation**

In order to ensure utilities are relocated in timely fashion, it is crucial that early liaison be established between the utility companies and the design unit. This early involvement will help determine where potential conflicts exist, where possible design changes would preclude the need to relocate the utility and, if utility relocation is required, allow the utility company to budget the necessary staffing and capital outlay required to carry out the relocation activity on a schedule compatible with the project certification requirements.

Utility relocation can commence after the environmental document is approved and continue concurrently with the property acquisition process. Although it is preferred to have all utility relocations completed before the highway construction begins, utility relocation work may continue through the construction process. All utility relocations must comply with state and federal laws and conform to Department specifications. For additional discussion, refer to Chapter 13, "Utility Relocation," in this Manual and Chapter 14, "Utility Facilities," in the *Local Assistance Procedures Manual*.

#### **17.04.04.02      Utility Master Contracts**

The Department has entered into master contracts with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These contracts are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects on the SHS no matter what the source of project funds or the agency responsible for project design. The terms of the Master Contract determine the cost apportionment, but as a general rule, utility activities fall under the Master Contract terms whenever those activities support the construction, maintenance, improvement, or repair of the freeway, regardless of whether such activities take place within the right of way, outside the right of way on other public property, or outside the right of way on private property. In order that the Department not be inadvertently assessed utility activity costs which ought to have been paid by the LPA, it is extremely important that the Cooperative Agreement contain utility relocation clauses that are not modified unless Region/District Right of Way Utility Relocation section has been consulted and has agreed in writing to any proposed clause changes. The only exception to the use of the Master Contract is when the freeway improvement project is an LPA-imposed mitigation requirement arising as a result of developer request for property improvement. In this case the developer will be responsible for all utility relocation costs in accordance with applicable case law.

#### **17.04.04.03      High/Low Risk Utility Facilities**

All underground high and low risk utility facilities within the State Highway rights of way shall be handled in accordance with the Department's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." The LPA's Project Engineer must complete the Certification required by the policy.

#### **17.04.04.04      Agreement for Positive Location of Underground Utilities (Pos-Loc)**

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that call for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

Please refer to the Right of Way Utilities Web site at <http://www.dot.ca.gov/hq/row/utility/> for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocation," of this Manual.

#### **17.04.05.01**      **Cooperative Agreements**

After the PSR is approved, the LPA(s) and the Department jointly develop and execute a Cooperative Agreement(s) which contains all the respective responsibilities and funding roles for the various phases of project development and construction. All special funded projects on the SHS with construction costs *greater* than \$1,000,000 require Cooperative Agreements. Please see Section 17.07.00.00 for further discussion.

**NOTE:** Projects with construction costs *less* than \$1,000,000 can also be quite complex due to funding or other factors. In these cases, entering into a Cooperative Agreement is often the only practical way to adequately memorialize the respective agreements and responsibilities, and the \$1,000,000 threshold figure should be ignored.

#### **17.04.05.02**      **Tracking of Right of Way Expenditures**

It is crucial that each Region/District have a responsible Right of Way Project Coordinator/Administrator to track the monthly/total expenditures for each project from the inception of the Right of Way activities. Some of the responsibilities are to ensure that each Cooperative Agreement is current and adequately funded. If additional resources are needed, the Cooperative Agreement must be amended. If resources have been exhausted, all right of way activities must stop and cannot continue until an amendment has been executed and additional resources secured.

#### **17.04.05.03**      **Capital Support Reimbursed Work**

The Region/District's Right of Way staff may perform work for LPAs on Locally Funded projects on the State Highway System and be reimbursed pursuant to a Cooperative Agreement. Any new or revised Cooperative Agreements for reimbursed work require individual approval from your Deputy District Director for Program and Project Management.

Each Region/District has an allocation of reimbursed Capital Outlay Support for the current fiscal year. The allocation lists both the District's work and work done for the District by the Division of Engineering Services and other units. Each District may enter into new or revised agreements for reimbursed work as long as no agreement increases the total reimbursed work on its projects in any future year above its current allocation. The District may submit these agreements to the Cooperative Agreement Branch in the Division of Design with a statement signed by its Deputy District Director for Program and Project Management, stating "This agreement will not increase the level of Capital Outlay Support reimbursed work on District \_\_\_\_\_ projects in any future year to a level above the current allocation. This includes work by the Division of Engineering Services and other units that work on the District's projects." The Cooperative Agreement Branch will process your agreement if it has this signed statement. If a proposed cooperative agreement would lead to an increase in the total reimbursed work on your projects in any future year, please contact your counterparts in the other Districts to determine if they expect a commensurate decrease. You may trade future reimbursed work. The new Department policy for performing reimbursed work is set forth in Project Management Directive (PMD-010), *Capital Support Reimbursed Work*, dated December 21, 2001 (Exhibit 17-EX-9).

#### **17.04.05.04**      **Reimbursed Supervision**

On some locally funded projects, when the appropriate approvals provided for above have been obtained, the Department will provide supervision of an LPA's right of way activities. In this context, reimbursed supervision includes providing the necessary review and approvals to complete the Right of Way phase of the project.

**NOTE:** The difference between the Department (or a qualified LPA) providing "oversight" and "supervision" involves the *approval* of work products. These review/approval responsibilities must be included in the Cooperative Agreement.

#### **17.04.05.05**      **LPA Qualification Requirements**

Qualified LPAs may perform the right of way functions for which they have been approved. Nonqualified LPAs must utilize one of the options listed under Section 17.05.07.01. (See Section 17.05.00.00, "Local Agency Qualifications," and Section 17.06.00.00, "Consultant Qualifications.")

#### **17.04.06.01**      **Special Funded Projects - Duties**

In addition to the general duties described at Section 17.02.04.03, other Right of Way duties may include the following:

- A. Coordinating with the Region/District Planning and Management Branch to ensure that all special funded projects are included in PMCS/XPM and are updated as necessary on the Status of Projects report.
- B. Coordinating/assisting in the preparation of the Project Study Report, the Project Report, cost estimates, etc.
- C. Coordinating/assisting with the preparation of Cooperative Agreements or Highway Improvement Agreements.
- D. Coordinating the Department's line functions (e.g., appraisals, acquisition, relocation, etc.) when their assistance is necessary in performing oversight or when the state performs these functions as reimbursed work.
- E. Providing oversight during the right of way phase (if these functions are performed by others) to ensure that all right of way activities and "deliverables" conform to state standards. [See Section 17.04.06.02, "Oversight (Quality Assurance)."]
- F. Approve the Right of Way Certification. (See Section 17.08.00.00, "Project Certification.")

#### **17.04.06.02**      **Oversight (Quality Assurance)**

The Department, as the ultimate owner-operator of the SHS, will always be liable for maintenance and operation of the System and retains tort liability once the completed project has been accepted. Furthermore, as also discussed above, on special funded projects, the Department plays an active role in the project development process. Department approval is required for the Project Report and the PS&E. The Department usually prepares the environmental document (which may require extensive Right of Way involvement). During the right of way phase, we are very much concerned with the quality of the work product and therefore with the qualifications of the parties performing this work. It is therefore in our best interest to become as involved in the projects as staff time permits. Project sponsors, whether LPAs or private entities, are responsible for funding these projects, but often need Department involvement to become familiar with the development process and requirements. For our purposes here, this involvement is referred to as oversight. The Department funds its oversight activities on special funded projects unless the project is privately sponsored. On private projects, the project sponsor is responsible for the cost of oversight.

Oversight is an intensive level of Department staff involvement in providing review of all right of way activities, and acting as a resource for information on Right of Way Manual requirements. LPAs negotiating Cooperative Agreements should be made aware as early in the process as possible that Department staff will play an active role in reviewing the right of way activities for the project. (See Exhibit 17-EX-11, "Functional Responsibilities," Oversight.)

Oversight responsibility begins with providing the LPAs all applicable manuals, handbooks, guidelines, etc., containing the federal and state requirements and regulations. It can include assistance in preparing and reviewing the Project Study Report, maps, cost estimates, R/W data sheets, utility relocation arrangements and schedules, and any other requirements for the project. It can also include qualifying LPAs to perform their own right of way functions and assisting nonqualified LPAs to retain qualified consultants. Of particular concern to the state, oversight should include the review of a representative sampling of "deliverables," i.e., right of way maps, appraisals, acquisition files (deeds, contracts, diaries, etc.), RAP files (claims, payments, diaries, etc.), and review and approval of the LPA's R/W Certification.

Oversight responsibilities extend beyond the project certification and include whatever efforts are necessary to ensure that the right of way acquired for the project is properly conveyed to the Department and that our requirements are satisfied pertaining to system integrity (e.g., title, description, and monumentation).

#### **17.04.06.03**      **Expenditure Authorizations - Oversight**

As noted above, each special funded project will be the subject of a Cooperative Agreement. (See Section 17.07.00.00, "Cooperative Agreements.") When the Agreement is being developed and in particular after the Agreement is approved, the Local Programs' role is *usually* one of oversight. Each Cooperative project will have an Expenditure Authorization (EA) assigned. Local Programs staff may be involved in activities from a project's inception through the end of construction. Consult Division of Right of Way's Time Charging Manual for appropriate time charging codes.

#### **17.04.07.01**      **Appraisal Requirements**

Purchase of the required right of way can be made only after a written appraisal of its market value has been made and approved. All projects on the SHS require an appraisal review process which at a minimum:

- A. Requires a qualified reviewing appraiser review the appraisal to assure it meets applicable appraisal requirements and shall, prior to approval, obtain any necessary corrections or revisions.
- B. If the reviewing appraiser is unable to approve or recommend approval of the appraisal as an adequate basis for the establishment of just compensation and it is not practical to obtain an additional appraisal, the reviewer, acting as reviewing appraiser, may develop appropriate appraisal documentation to support an approved or recommended value.
- C. Requires a signed statement, which identifies the appraisal report reviewed and explains the basis for such recommendation or approval. In addition, any damages and/or benefits to the remainder must be identified in the statement.

#### **17.04.07.02**      **Dual Appraisal Requirements**

The Department requires dual appraisal reports for unusually complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to the realty, severance damages, and construction contract work. This is to ensure that the owner receives just compensation and those large or complicated appraisals are documented and conclusions supported. Section 7.01.00.00 in Chapter 7, “Appraisals,” in this Manual contains the Department’s requirements for dual appraisals.

Dual appraisals shall be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer.

#### **17.04.07.03**      **Waiver of Dual Appraisals**

Dual appraisals are required for parcels expected to exceed \$500,000 in value or which involve complex or controversial appraisal problems. There is an exception process in Section 7.01.07.01 that provides for waiver of dual appraisals.

It is our responsibility to point out those appraisal situations where it may be prudent or helpful to have two appraisal opinions. It is the LPA management’s responsibility to decide if they are comfortable with only one appraisal when the values may be several hundred thousand dollars of measure money, compared to the cost of a second appraisal.

If the LPA is hiring a review appraiser, then the review appraiser will make a recommendation in writing to the LPA to either require dual appraisals or waive the dual appraisal requirements. The LPA will make a decision based on the recommendation. The LPA can decide to follow the recommendation or not follow the recommendation, but they do need to consider the recommendation and keep it in the documentation of the file. If the LPA waives the dual appraisal requirement and the work is being done by consultants, this decision means the LPA would only contract for one report.

If the LPA is relying on the Department to fulfill the duties of appraisal review, then the LPA staff should be made aware of dual appraisal or potential dual appraisal situations as soon as the Department becomes aware of them. The Department will make a recommendation in writing to the LPA concerning waiver of dual appraisals. The decision to waive the dual appraisal requirements rests with the LPA.

If the Department is doing the appraisal work for the LPA on a reimbursed basis and the LPA decides that only one appraisal is needed, then the Department would prepare only one report. The single Department report would still be subject to the normal cumulative review process of approval.

Note: Where the LPA is the project lead, the final decision on the question of dual appraisals rests with the LPA.

**NOTE:** For additional details and a description of the appraisal requirements, please refer to Chapter 7, “Appraisals,” in this Manual.



#### **17.04.07.04**      **Access Control - Private Property Benefits**

Access control changes that directly benefit or serve private property require that compensation be paid for the increased value of the property. The increased value is determined by a “before and after” appraisal of the property.

For additional information, refer to Chapters 7 and 16 of the Right of Way Manual.

#### **17.04.07.05**      **New Public Road Connection - Benefits**

If the proposed access opening or modification is for the purpose of allowing a new public street connection, compensation as defined above will be required unless the street clearly serves a public purpose and there are no abutting private properties that would receive a preponderance of benefit due to increased development potential.

**NOTE:** For additional discussion of these policies, refer to Chapter 26 and Chapter 27 of the *Caltrans Project Development Procedures Manual*.

#### **17.04.08.01**      **Special Funded - Power of Eminent Domain**

Upon request by the Department, a city may acquire property for state highway purposes and may take title in the name of the state or the city (Streets and Highways Code Section 113). A similar power is granted to counties under Streets and Highways Code Section 760.

In general, there are no comparable legislative provisions authorizing transit/transportation/measure authorities to acquire property by condemnation or take title to property acquired for state highway purposes. In the absence of specific statutory authority, local traffic authorities do not have power to take title to real property to be used for state highway purposes. Conversely, the state is not authorized to take property by eminent domain in the name of the traffic authority.

#### **17.04.08.02**      **Acquisition Settlements**

The decision as to the most effective way to acquire the necessary rights of way is the responsibility of the LPA. The Department’s *usual* role is limited to oversight. Within this context, LPAs must review and approve their own administrative authorizations and/or settlement amounts, exchanges, etc., according to the criteria contained in the Right of Way Manual. The Department’s role is to ensure that such acquisitions are in conformance with the Uniform Act and that such actions do not deprive the property owner of just compensation.

Whenever the Department is performing acquisition for an LPA on a reimbursed basis and an administrative settlement or statutory offer is proposed, the LPA must be involved in and approve any amount over the approved appraisal.

#### **17.04.09.00**      **Condemnation for LPA Projects - General**

The power of eminent domain can only be exercised if the condemning authority can establish:

- The necessity of the project,
- The project location is most compatible with the greatest public good and least private injury,
- And, the property is necessary for the project.

State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System. The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located. (Also see Exhibit 17-EX-10 in this Chapter.)

The steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The local agency must have entered into negotiations to draft an agreement for the project. There must be a draft cooperative agreement. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety. In addition to any language that may appear in the Cooperative Agreement, the local entity must obtain approval in writing from Headquarters Right of Way to proceed to take Resolutions of Necessity before the appropriate local body.

If the LPA is to hear the resolutions, then the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project.

If the county or city elects not to undertake this activity on behalf of another LPA (e.g., a Transportation Authority), then the Department should assume this task. The cost for providing legal services is reimbursable and the requirement for this service must be included in the Cooperative Agreement or Right of Way Services Agreement. In addition, prior budgetary authority for reimbursable work must be obtained.

#### **17.04.09.01**      **Approval for Local Agencies to Hear Resolutions of Necessity**

The Region/District will help to facilitate the submission of an approval package to the Chief of the Division of Right of Way in Headquarters. The package must include all of the following:

- Justification for the request
- Documentation of the resolution from the governing body of the city or county agreeing to acquire property for State Highway purposes and to hear resolutions
- Description of the project, i.e. number of parcels, maps, proposed construction project
- Proposed schedule for acquisition
- Draft copy of the cooperative agreement

The package will be logged in at Headquarters Right of Way and forwarded to the appropriate office chief, either Acquisition or Local Programs for review and recommendation. Final decision will rest with the Chief, Division of Right of Way.

A log will be kept in Headquarters of the approvals and denials. Once Headquarters has notified the Region/District of approval, then the Region/District is responsible for notifying the local agency in writing that they may proceed with the acquisition of real property or interest therein. The notification must designate the limits of the project under recommendation.

#### **17.04.09.02**      **Notice of Intent**

The local agency is required to follow the Department's Notice procedures. A Notice of Intent to adopt a Resolution of Necessity can only be served after the grantor has been given a reasonable amount of time to consider the offer presented. The Notice of Intent cannot be served immediately following the offer to acquire. The Department interprets reasonable time to be a minimum of approximately 30 days and lengthens with increased complexity of the rights to be acquired.

**NOTE:** In all cases, a copy of each Notice of Intent is to be sent to Headquarters Right of Way Local Programs by Region/District Right of Way Local Programs Coordinator.

#### **17.04.09.03**      **Resolution of Necessity**

In all cases the resolution package must be reviewed and approved by the Department's Legal Office prior to being heard. The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2.

The Resolution of Necessity must contain a general statement of the public use for which the property is being acquired and must reference the appropriate statute for the property rights to be acquired by eminent domain. Frequently cited references are:

- Streets and Highways Code Section 102 allows for acquisition by eminent domain for state highway purposes
- CCP Section 1240.410 – the acquiring agency is acquiring a remnant of such size, shape or condition that it will have little market value
- CCP Section 1240.510 – the property is being acquired from another public agency for a compatible use
- CCP Section 1240.610 – the property is being acquired from another public agency for a more necessary public use
- CCP Section 1240.220 – the public agency is acquiring additional property for future use, requires owner's consent
- CCP Section 1240.150 – entire parcel is to be acquired when the remainder would be of little value to the owner, requires owner's consent

The resolution must also contain a general location and extent of property rights to be acquired to allow for reasonable identification. The resolution document must declare the public finds each of the following:

- Public interest and necessity require the project
- The project is located in a manner to provide the greatest public good and least private injury
- The property is necessary for the project
- An offer has been made to purchase the property in accordance with Section 7267.2 of the Government Code

Upon passage of a resolution, a copy of that resolution must be sent to Headquarters Right of Way Local Programs.

#### **17.04.09.04**      **Request to Appear**

Statute allows the property owner fifteen days within which to request an appearance before the board hearing the resolution request. If a Request to Appear is not timely, then the right to appear has been waived and the resolution will be heard as a consent item. Exceptions to timely requests may be granted jointly by the delivering agency and the governing body. The reasons for exception will be documented in every case. Possible reasons are documented illness or documented travel.

If the owner requests an appearance, then the local agency must follow a review process. The review process may require postponement of the date the resolution is heard before the CTC, County Board of Supervisors or City Council.

The Condemnation Evaluation Meeting and Condemnation Panel Review Meeting provide a forum where property owners can meet with Local Agency Right of Way and Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that a decision-maker be included in the review process. Occasionally, certain acceptable design exceptions with minor impact can satisfy the property owner's concerns. The Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting may be combined only when there are no design issues. If there are no design issues, then the decision to combine the two meetings is made by the LPA.

#### **17.04.09.05**      **Reviews Prior to Appearance (Heard by California Transportation Commission)**

When a request for an appearance is on a Resolution of Necessity to be heard by the California Transportation Commission (CTC), regardless of who is performing the right of way and design activities, the Department will conduct the Reviews, and will make the presentation before the Commission. Appropriate local agency staff shall participate in the reviews and may be asked to be present at the Commission meeting.

#### **17.04.09.06**      **Reviews Prior to Appearance (Heard by City Council or County Board of Supervisors)**

When a Local Agency is performing the design activities, the Local Agency will conduct the Reviews. The Local Agency shall make the presentation before the City Council or County Board of Supervisors unless the Cooperative Agreement specifies otherwise. The Local Agency will fully document each review.

The Department's concurrence is required for any solution that is an exception to the Department's Right of Way and/or Design Policies, Procedures and Standards.

It is strongly recommended that Department Staff from Right of Way and Design are included on the Local Agency's Second Level Review Panel. Exceptions must be preapproved.

#### **17.04.09.07**      **Condemnation Responsibilities (Department)**

Following are the usual responsibilities of the respective parties whenever the Department undertakes legal services for the acquiring agency and which must be included in the Cooperative Agreement:

- A. Legal opinions and advice in all matters relating to the right to acquire the property for the project or to the valuation of said property.
- B. Department will obtain the necessary Resolution of Necessity from the CTC, or other appropriate body.

- C. Attorney services in connection with selection of witnesses for trial, the preparation and conduct of the trial, post-trial motions and appellate proceedings in condemnation cases for the acquisition of property or actions to acquire possession of property.
- D. Attorney services as necessary or required for property management and/or relocation assistance proceedings.

**17.04.09.08**      **Condemnation Responsibilities (LPA)**

In preparation for condemnation, the LPA will *normally* provide the following:

- A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.
- B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.
- C. An adequate legal description of the property.
- D. Right of Way/Parcel maps as required for condemnation complaints.
- E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the appropriate governing body to contest the necessity for the taking.
- F. Documents necessary to deposit the just compensation with the State Treasurer.
- G. Necessary information for obtaining orders of possession.
- H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.
- I. An authorized representative from the LPA who will appear at the hearing before the appropriate governing body to adopt the Resolution of Necessity.

**17.04.09.09**      **Condemnation Trials Responsibilities (LPA)**

In preparation for trial, the LPA will *usually* provide the following:

- A. A copy of the LPA's staff appraisal report.
- B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.
- C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.
- D. All maps, exhibits, and photographs required for trial.

- E. Expert appraisal witnesses, subject to prior approval by the Department's Legal Division. All witnesses shall be made available to Legal for preappraisal and presubmission meetings to ensure they are proceeding on legally proper grounds.
- F. If private sector consultants are used, service of the LPA's acquisition consultant to assist Legal at the trial, to the extent that Right of Way Agents typically provide such services.

The LPA is also responsible for depositing sufficient funds with the Department to cover jury fees, deposits of probable just compensation for orders of possession, all trial preparation costs such as witness fees, deposition fees, and attorneys' fees.

#### **17.04.10.01**      **Property Management - Income**

Pursuant to Streets and Highways Code Sections 104.6 and 104.10, twenty-four percent (24%) of the gross rental income derived from property acquired in the state's name is to be transferred to the county in which rental income is derived. These sections are applicable whenever property is vested in the state's name regardless of the source of money to acquire the property and who will provide the property management services to the LPA. Pursuant to Streets and Highways Code Section 104.13, the Department is responsible for the payment of possessory interest taxes on leased property held for future state highway needs and for excess lands. All funds distributed to a county (24%) pursuant to Section 104.10 are considered to be the full or partial payment of the total possessory interest taxes due.

The above distribution of funds must be clearly detailed in the Cooperative Agreement or Right of Way Services Agreement with the LPA, particularly in situations where another LPA is acting as an agent for the Department in providing the property management services.

If Department is providing the property management, the balance of gross rental receipts (less adjustments for possessory interests and/or 24% allocation) will be transferred to the LPA. Costs incurred in conjunction with property management activities are reimbursable costs and will be part of the advance deposit for estimated support costs. The LPA will not be paid interest on rental income.

#### **17.04.11.01**      **Local Agency Relocation Assistance Appeals Process**

Whenever the LPA is proposing to do their own relocation assistance work, they must have an appeal process that meets the Uniform Act/CFR requirements and is approved by the Department.

The District must approve the process and the Appeals Board members or hearing officers designated by the LPA. The submittal to the Department should include the following:

1. Assurances that all persons receiving relocation assistance will be advised of their right to appeal.
2. The names and qualifications of prospective members of an Appeals Board or appeal review officers. (Note: Appeals Board members should not be persons who are involved in the relocation claims process nor any supervising persons involved in the claims process.)

3. The LPA's plan for hearing appeals in a timely manner and advising the appellant of the outcome of the hearing.
4. Assurances that all appellants who do not receive the total relief requested will be advised of their right to seek judicial review.

#### **17.04.12.01**      **Project Certification**

The LPA sponsor is responsible for certifying that physical and legal possession of the necessary right of way has (or will be) obtained, that all occupants have vacated the property, and that all acquisition and relocation activities comply with applicable state and federal laws. The certification must be submitted to the Department for approval with the following information and attachments: status of required right of way, agreements for possession and use, compliance with relocation assistance program, status of affected railroad facilities, material and disposal sites, specific authorization and utility contract for utility relocation. For an additional discussion of the Certification process, see Section 17.08.00.00, "Project Certification," and Chapter 14, "Project Certification," in this Manual.

#### **17.04.13.01**      **Acceptance of Title by Caltrans**

The LPA sponsor is responsible for delivering title to the right of way acquired for the project to the Department free and clear of all encumbrances detrimental to Department's present and future uses.

The Department will accept the completed special funded project into the SHS, provided the project was approved and that right of way was acquired in accordance with Department practices. See *Guidelines for Local Agency Involvement in Right of Way Acquisitions and Delivery of Projects on the State Highway System*, dated December 10, 2001 (Exhibit 17-EX-10). To ensure compliance, the following procedures have been adopted:

##### **A. LPA-Sponsored Projects (Public Projects)**

1. The LPA prepares and submits to the Local Programs Coordinator the acquisition documents (Right of Way Contract, Grant or Easement Deed, escrow instructions, etc.) for each acquisition transaction.
2. The Coordinator reviews and approves the transaction and arranges for the authorized District Right of Way representative to acknowledge acceptance of the deed.
3. Upon acceptance, the Region/District will submit the Deed and escrow instructions to the title company.
4. The title company, upon receipt of a check from the LPA (or the Department, if appropriate), will close escrow, issue a policy of title insurance as in the amount specified in the escrow instruction letter, and record the deed vesting title in the LPA or state, free and clear of all liens and encumbrances except as otherwise stated.

##### **B. Private Developer-Sponsored Projects (Private Projects):**

1. The Developer acquires the necessary rights of way with title vested in the developer's name.
2. The Developer provides the Department, prior to the issuance of an encroachment permit, a Right of Way Certification and acquisition package consisting of a Grant Deed vesting title in state's name, a Policy of Title Insurance, and escrow instructions for each parcel acquired.

3. R/W reviews the certification and acquisition package(s) and prepares a Memorandum of Settlement.
4. R/W confirms that the certification and acquisition documents are correct, signs R/W Certification, and notifies the Encroachment Permits Branch.
5. The state grants the encroachment permit to Developer.
6. Prior to acceptance of the completed project by the Department, the Grant Deed conveying title to the state is recorded and a policy of title insurance naming the state is issued.

#### **17.04.14.01      Assessment Districts**

In order to minimize future controversy, in cases where LPAs wish to utilize assessment district procedures in acquiring rights of way, the following procedure has been established:

##### **A. Requirements for Prior Department and FHWA Approval (Where Necessary)**

For each project where the local share is to be provided by an assessment district (construction and/or right of way reimbursement), the LPA sponsor shall receive prior Department approval of its intended assessment district procedures. If the project has federal aid, FHWA approvals are also required.

##### **B. Procedure for Securing Approval**

At the field review stage, the LPA seeks the Department and FHWA's approval (when necessary), submitting its intended assessment procedures and a description of the method its valuation engineer will use to determine individual assessments.

The District forwards the assessment procedures to Headquarters for approval.

The request, when appropriate, is then forwarded to FHWA for approval. Each level of approval should be obtained before Right of Way activities are commenced.

##### **C. Criteria to be Used in Granting Approval**

The following criteria will be used by the Department and FHWA (where appropriate) to determine whether the proposed assessment district is consistent with the requirements of 49 CFR 24.A-C.

1. All property to be acquired must be appraised in accordance with existing procedures.
2. The assessment may not be made on a formula which would automatically increase an owner's share if the owner successfully secures a higher payment through the judicial or negotiation processes.
3. An assessment must be based on a relationship attributable to the special benefit each individual property owner receives and not by the costs and amount of right of way acquired. A consistent method of assessment will be done on a districtwide basis.
4. The inclusion of severance in deriving the method of assessment may conflict with the concept of all properties being benefited by the project unless the damages are offset by benefits, as actually determined, in an after condition.
5. Funds received from property owners in the assessment district cannot duplicate Federal funds to be applied to the highway project, but must be limited to the local share of the total project cost.



**NOTES:**

## **17.06.00.00 - CONSULTANT QUALIFICATIONS AND SELECTION CRITERIA**

### **17.06.01.01      Consultant Qualifications - General**

It is extremely important for the LPA to select a R/W consultant who not only knows what the LPA's specific needs are, but has the qualifications to perform the work legally and ethically to meet those specific needs.

The authority for the selection of private sector consultants to perform right of way functions on both local assistance projects (Off State Highway System) and locally funded projects (On State Highway System) with or without federal funding has been delegated to the Local Public Agency. The selection process will be administered by the LPA using the Consultant Selection Criteria and Guide (below). The Criteria establish recommended minimum levels of experience and permit the evaluation of prospective consultant firms.

After completing the selection process and retaining a consultant whose performance met the LPA's expectations, the agency would be able to utilize this same consultant to perform similar jobs without needing to repeat the selection process if no more than a two-year period has elapsed. When substantially different right of way services are needed (e.g., acquisition vs. relocation), the LPA should repeat the selection process.

### **17.06.02.01      Consultant Selection Criteria and Guide**

#### **APPRAISAL CONSULTANTS**

To be used on projects where property rights are to be acquired for a project, whether those rights are temporary, permanent, in fee, or easement, or compensable damages accrue to property as a result of the project. The appraiser measures the fair market value of the rights to be acquired.

When selecting appraisal consultants, care must be exercised to ensure that the candidates have expertise in the specific appraisal field appropriate for the contemplated project. The greater the complexity of the project, the greater the need for highly specialized and/or experienced appraisers. Appraisal License is required by law for transportation projects on or off the State Highway System.

#### **Appraisal Consultants are required to possess:**

- Appropriate Appraisal license as issued by the California Office of Real Estate Appraisers in accordance to the degree, complexity and value of the appraisal required:
  - a) Residential License for any noncomplex 1-4 family property with value of \$1 million and Nonresidential property with a transaction value up to \$250,000.
  - b) Certified Residential for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to \$250,000.
  - c) Certified General for all real estate without regard to transaction value or complexity.
- Minimum two (2) years' experience in appraisal of rights for eminent domain purposes.
- Successful completion of a course in appraisal of partial acquisitions for public agencies.
- Successful completion of a course in the Uniform Relocation and Real Property Acquisition Policies Act taught by a recognized organization.
- Successful completion of a course in State Eminent Domain Law taught by a recognized organization.
- Specific knowledge and experience appropriate for the proposed project. Work samples provided by the consultant should be reviewed by the LPA.

### **Appraiser Responsibilities under the Uniform Act:**

- Property owner must be notified in writing of Agency's decision to appraise.
- Property owner or designee must be given opportunity to accompany appraiser during property inspection.
- Responsibility of sending Title VI information.
- Diary entry of notifications and contacts.
- Appraisal to contain minimum recognized standards for public acquisition (Zoning, Property Rights to be acquired, Highest and Best Use Analysis, Comparables, Improvements Acquired, Damages, Cost to Cure, etc.)
- All appraisals must contain Appraiser and Review Appraiser Certificates.

### **REVIEW APPRAISER CONSULTANTS**

Each appraisal must be reviewed by a qualified review appraiser and contain a Review Appraiser Certificate. The review appraiser is the person responsible for appraisal quality and value determination. The review appraiser must remain independent and must not be subject to undue influence or pressure from any source to arrive at a particular value or to accept inadequate appraisal reports. It is essential that the review appraiser understands his/her responsibility is to recommend an estimate of value for just compensation determination by the acquiring agency. **The Uniform Act requires that an official of the acquiring agency must make the final determination of just compensation.**

#### **Review Appraiser Consultants are required to possess:**

- Certified Residential License for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to \$250,000 **or**
- Certified General License for all real estate without regard to transaction value or complexity.
- Minimum two (2) years' experience in reviewing appraisals for eminent domain purposes.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act and State Eminent Domain Law taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project.

#### **Review Appraiser Responsibilities under the Uniform Act:**

- Confirmation of Analysis of Highest and Best Use, Damages, and Cost to Cure Damages.
- Confirmation of valuation.
- Confirmation of Calculations and Report Integrity.
- Prepare signed statement certifying value of appraisal reviewed, including an explanation of the basis for recommendation.

### **ACQUISITION CONSULTANTS**

To be used when rights are to be acquired, whether those rights are temporary, permanent, in fee, or easement, or compensable damage payments are to be made as a result of the project.

When selecting acquisition consultants, care must be exercised to ensure that the candidates have expertise with the conditions affecting the acquisition that are present in the contemplated project. These may vary, and some factors to be considered include property type, type of occupancy, and project design/impact on remainder.

#### **Acquisition Consultants must possess:**

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the California Department of Real Estate (required by law). All Right of Way Contracts must be approved for content and signed or initialed by the Real Estate Broker.
- Minimum two (2) years' experience in the acquisition of rights for eminent domain purposes.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act and State Eminent Domain Law taught by recognized organizations. By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for maintaining a complete file on each parcel.
- Specific knowledge and experience appropriate for the proposed project.

It is **extremely important** for the local agency to be fully aware of the acquisition consultant's qualifications and knowledge of the Uniform Act. If there are violations by the acquisition consultant or consulting firm, the local agency could jeopardize a portion of, or all of the federal funding for the entire project.

If you have questions or concerns, please contact the Department's Right of Way Local Programs Coordinator in your area.

#### **Acquisition Consultants Responsibilities under the Uniform Act:**

- Ensure establishment of just compensation by local agency prior to initiation of negotiations.
- Expeditious acquisition within 30 days of approved appraisal.
- First Written Offer should be presented in person when possible.
- Summary Statement (basis for the appraisal) to be included with the First Written Offer.
- Owner to be given responsible time to consider offer and present material relevant to value determination (i.e., 30 days and a minimum of 3 contacts).
- Payment is required before taking possession unless date of possession clause is used in contract.
- Local agency is responsible for payment of all incidental expenses (title, escrow, surveys, prepayment penalties, etc.)
- Preparation of Administrative Settlements when it is reasonable and in the public interest.
- Diary entries including confirmation of delivering Title VI information if project is federally funded.

#### **RELOCATION CONSULTANTS**

To be used when there are occupants and/or personal property within the project area that must be relocated outside the project area. Occupancy may be residential or nonresidential, including agricultural uses. Relocation specialists may be used to prepare the relocation impact documents (part of the environmental clearance document) in the planning stage. A consultant proficient in both acquisition and relocation may be retained for both functions under the "caseworker" approach.

When selecting relocation consultants, care must be exercised to ensure that the candidates have expertise with types of occupancy affected by contemplated project, whether residential (owner-occupied), residential (tenant-occupied), personal property only, business, or nonprofit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced relocation consultants.

#### **Relocation Consultants should possess:**

- Minimum two (2) years' experience at the working level providing public agency relocation assistance.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act and State Eminent Domain Law taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project.

## **PROPERTY MANAGEMENT CONSULTANTS**

To be used when tenants will be in occupancy of the right of way after the agency has acquired the property but prior to displacement.

When selecting property management consultants, care must be exercised to ensure that the candidates have expertise with types of tenancies affected by the contemplated project, whether residential, personal property only, business, or nonprofit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced property management consultants.

### **Property Management Consultants should possess:**

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the California Department of Real Estate (required by law).
- Minimum two (2) years' experience at the working level in management of rental properties.
- Knowledge of applicable sections of the Uniform Relocation and Real Property Acquisition Policies Act, State Eminent Domain Law, and Landlord Tenant Law.
- Specific knowledge and experience appropriate for the proposed project.

## **RIGHT OF WAY PROJECT MANAGEMENT CONSULTANTS**

May be used to coordinate and direct the work of other consultants as well as local agency staff. Will have primary responsibility to ensure the work products for the project satisfy all requirements of applicable laws, statutes, regulations, policies, and procedures.

### **Project Management Consultants should possess:**

- Minimum five (5) years' experience at a supervising, managerial, or oversight level in a right of way organization operating with the power of eminent domain.
- Knowledge of the Federal and State Uniform Relocation and Real Property Acquisition Policies Act and Article 1, Section 19, California Constitution (granting the power of eminent domain law).
- State Eminent Domain Law taught by recognized organizations. Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act and
- Familiarity with project management theories and techniques, including project scheduling, staff assignments, and coordination and communication with other project entities.

### **Project Management Consultant or Principal of the consulting firm's responsibilities:**

- Ensure right of way process has been followed in accordance with the Uniform Act.
- Ensure consultants have appropriate licenses for the scope of work.
- Ensure Broker signs or initials all right of way contracts.
- Approval of all right of way files (signature in diary) that files are complete and in accordance to the Uniform Act with appropriate diary entries.

## **TURNKEY RIGHT OF WAY CONSULTANTS**

Multifunctional organizations that may be used to provide all right of way services required of a given project. Should be competent in each individual functional area. Turnkey consultants must have sufficient staff to preserve separation of the appraisal, appraisal review, and acquisition functions. An individual may be technically proficient in multiple functions, but may not be used as a turnkey consultant. All appropriate licenses/certifications are required for the type of services performed.

#### **17.06.03.01**      **Competitive Bidding**

Competitive bidding is one of the cornerstones of a financially successful project. It should be stressed to LPAs that seeking bids from qualified firms will ensure that the agency is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of work for the consultant, estimating the cost of the consultant's work, and determining the type of contract needed.

The LPA should be advised that caution must always be exercised in the choice of a consultant. Just because a particular consultant meets the threshold criteria, this should never be the only basis for retaining them. Other factors, such as experience on past projects as well as references, should be given careful consideration. Each project and each agency have unique demands; and just because a prospective consultant meets the broad qualifications contained in the Consultant Criteria, this does not also mean that the consultant can meet the LPA's requirements. The LPA is responsible for maintaining documentation concerning the consultant selection process. This information should be made available to the Department as part of the oversight process.

#### **17.06.04.01**      **Local Public Agency Liability for Consultants**

LPAs should be reminded that, as noted above, they are responsible and accountable for the actions of their consultants in properly executing their duties and activities in accordance with the Uniform Act. The LPA retains the ultimate responsibility for signing the Right of Way Certifications and is accountable for the actions and performance of their consultants.

The consultant's work products will be subject to oversight by the Department's Region/District R/W Local Programs staff.

The Department has established broad criteria for use in evaluating the qualifications in the respective right of way functions, but Department is in no way liable either for devising such criteria or for the performance of the consultants selected by the LPA. In the event the actions or performance of the consultant result in the loss of federal funds for the project, it is the sole responsibility of the local agency to repay these funds.

#### **17.06.04.02**      **Consultant Contracts**

In entering into consultant contracts, it should be stressed to the LPA that consultants must perform right of way functions to the same standards, practices, rules, and regulations as the LPA. The following additional discussion about contracting responsibilities should also be clearly conveyed to the LPA.

#### **17.06.04.03**      **LPA Responsibilities**

In each contract, the LPA responsibilities include the following:

1. Appraisal Review - As noted above, when federal funds are used for any portion of the project, a formal review of the appraisal by a review appraiser is required. When the parcel is on the State Highway System, a formal review must be done, whether or not federal funds are used.
2. Establishment of Just Compensation - In projects involving the acquisition of right of way, it will be necessary for the LPA to determine just compensation. **This cannot be delegated to a consultant.**
3. Assignment of a Contract Manager - The manager will serve as the contact person during the course of the project. The Contract Manager should be knowledgeable about all aspects of the project.

#### **17.06.04.04**      **Contract Manager Responsibilities**

The Contract Manager is responsible for the following:

1. Coordinating the review and approval of all consultant work products.
2. Approving requests for payment.
3. Coordinating all consultant activities for the project.
4. Providing interim and final contract completion reports.
5. Following the California Department of Transportation *Right of Way Manual* in the performance of any right of way activities.

#### **17.06.04.05**      **Contract Administrator Qualifications**

The contract administrator ideally should have the following background:

1. Strong professional experience in the functional area under contract.
2. Familiarity with the project and contract objectives.
3. Understanding of management expectations.
4. Experience with the contract process.
5. The ability to communicate effectively.

## CHAPTER 17

### Local Programs Table of Contents

#### EXHIBITS

(in the order in which they appear in the text)

<u>Exhibit No.</u>	<u>Title</u>	
17-EX-1	Right of Way Checklist	Section 1
17-EX-2	Flow Chart of Right of Way Procedures	Section 2
17-EX-3	RTPA, MPO Jurisdictions (Map showing all respective jurisdictions in the State)	Section 2
17-EX-4	Simplified Statewide and Regional Planning and Programming Cycle	Section 2
17-EX-5	DRE Legal Opinion/1995 Transmittal Memo to Districts	Section 3
	Checklists from each of the R/W functional areas (6A-6F):	
17-EX-6A	Appraisal Review Checklist	Section 3
17-EX-6B	Acquisition Review Checklist	Section 3
17-EX-6C	Relocation Assistance Review Checklist	Section 3
17-EX-6D	Excess Land Review Checklist	Section 3
17-EX-6E	Property Management Review Checklist	Section 3
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17-EX-7	Policy for Developing Special Funded Projects	Section 4
17-EX-8	Acknowledgement For Donations	Section 4
17-EX-9	Capital Support Reimbursed Work	Section 4
17-EX-10	Guidelines for Local Agency Involvement on the State Highway System	Section 4
17-EX-11	Functional Responsibilities (Monitoring/Oversight Comparison)	Section 4
17-EX-12	Qualification Questionnaire (LPA)	Section 5
17-EX-13	Hold for Future Use	
17-EX-14	Checklist for Cooperative Agreements	Section 7
17-EX-15	Cooperative Agreement Manual-Financial Policy (Policy on Advance Deposits)	Section 7
17-EX-16	Right of Way Certification - Sample Letter (Private Projects) - See Exhibit 17-EX-18	Section 8
17-EX-17	No Right of Way Certification	Section 8
17-EX-18	Right of Way Certification (LPA certifications for all projects, including Indemnification Clause by Local Agency)	Section 8
17-EX-19	EEM Agreement Declaring Restrictive Covenants (ADRC) - Sample Only	Section 9
17-EX-20	Guidelines for LPA Early Acquisition Prior to Environmental Approval (Projects on State Highway System Only)	Section 4



**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO ENVIRONMENTAL APPROVAL (PROJECTS ON STATE HIGHWAY SYSTEM ONLY)**

(Form #)

EXHIBIT

17-EX-20 (NEW 12/2005)

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State of California  
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

**M e m o r a n d u m***Flex your power!  
Be energy efficient!***To:** DISTRICT DIRECTORS**Date:** November 2, 2004Attention: Region/District Division Chiefs  
Right of Way  
Project Management  
Design**File:** Local Programs  
Reference File  
LP 04-1**From:** J. MIKE LEONARDO  
Acting Chief Engineer**Subject:** Alternatives For Right of Way Acquisition Prior to Environmental Approval For Local Agency Projects on the State Highway System

The Division of Right of Way and Land Surveys (HQ R/W & LS) Acquisition Reference File 02-1, "Right of Way Acquisition Prior to Environmental Approval – STIP" dated December 9, 2002, (copy attached) is hereby expanded to include projects on the State Highway System (SHS) for which the Local Public Agency (LPA) is the lead Agency.

There are three alternatives available to a LPA for acquiring right-of-way prior to environmental approval:

- A. Hardship or Protection: Request approval for Hardship or Protection acquisition of an individual parcel in accordance with current policies/procedures (may require Federal approval). To be considered for Hardship acquisition, the property owner must be under unusual personal circumstances aggravated by the project. To be considered for Protection acquisition, imminent substantial building activity or appreciation will cause the land value to increase substantially faster than the STIP inflation rate for construction projects. Hardship and Protection acquisitions are further explained in the Right of Way Manual, Chapter 5.
- B. Open Market Transaction: Expend LPA funds to purchase an individual property for sale on the open market. The property owner's decision to sell must be unsolicited by the LPA and title must be taken in LPA's name. The file must be fully documented with proof of the open market transfer. Examples of appropriate documentation may include, but are not limited to:

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
ENVIRONMENTAL APPROVAL (PROJECTS ON STATE  
HIGHWAY SYSTEM ONLY) (Cont.)**

(Form #)

EXHIBIT

17-EX-20 (NEW 12/2005)

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District Directors, et al.

November 2, 2004

Page 2

- Proof from listing agent that property is listed.
- Photo of "For Sale" sign on property.
- Letter of intent from property owner.

Note: If the file is not appropriately documented, the State of California (State) will not accept title to the property, nor will the property qualify as a soft match as discussed later herein, until full compliance with the Federal Uniform Relocation Assistance and Real Properties Acquisition Policies Act (Uniform Act) is achieved.

- C. Early Acquisition: May request approval for "Early Acquisition" on the project, after completion of environmental studies and the selection of a preferred alternative, in accordance with the following criteria:
1. LPA must expend its own funds (capital and capital support) on the right-of-way element of the project.
  2. The request for approval must include substantiation that the project is not controversial. There must be a determination that the acquisition will not limit the choice of mitigation measures, and that the LPA has conditioned its future use of the property on CEQA compliance. This documentation must be in writing and maintained in the project file.
  3. If a Federal-Aid Project (i.e., \$1 of Federal-aid on any portion of the project), Federal funding options shall be preserved through compliance with Federal Regulations concerning Early Acquisition [see 23 CFR 710.501(a)(b) and (c)].
  4. The project must either be a programmed or an authorized project.
  5. The preferred alternative has been made public at a public hearing, or other public forum if a public hearing was not required.
  6. Freeway agreements, if required, or a resolution from the local governing body, must be obtained in accordance with Sections 100.1 through 100.4 of the Streets and Highways Code.

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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7. The design will have progressed sufficiently to be able to accurately convey right-of-way requirements for preparation of appraisal maps and deeds.
8. The property may not change from its current use. On new alignments, acquisitions shall be limited to full parcel acquisitions only. Partial parcel acquisitions are not permitted, except for existing route widening or other minor system improvements.
9. Notices to owner for utility relocations shall not be issued.
10. Removal of improvements, including utilities, shall only be conducted when public safety is an issue. See Right of Way Manual Section 11 for Property Management procedures.
11. Laws, regulations, policies and procedures, including the Uniform Act, must be followed throughout the appraisal and acquisition process.
12. Grantors shall be notified that Resolutions of Necessity will not be sought prior to final environmental approval. Owner occupants shall be advised of their right to buy back the property at fair market value in the event the property is not used for the proposed project and they do not relocate (see Right of Way Manual, Section 16.10.04.00).
13. Title to the property will be taken in the name of the LPA, not the State. Title shall be in fee and free and clear of all encumbrances. Any exceptions shall be reviewed and approved by District/Region Right of Way prior to transaction being completed. Acceptance of said title by State is subject to a review of a Policy of Title Insurance in State's name.
14. It is strongly recommended a cooperative agreement be fully executed to address, at a minimum, the early acquisition activities. However, if the Department is performing the work for the LPA under reimbursed authority, a fully executed cooperative agreement must be in place prior to any work being performed.
15. LPA and Project Manager must ensure that right-of-way expenditures of local agency funds do not exceed the project's total available local-only funds.
16. The attached "Check Sheet – Local Agency Request for R/W Acquisition Prior to Final Environmental Approval on SHS Projects" shall be submitted with the LOQ.

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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A LPA requesting to qualify a project under Alternative "C" must meet all of the criteria listed above. A Letter of Qualifications (LOQ) approved by the HQ Chief, Office of Appraisals and Local Programs (Office) is required prior to proceeding with right-of-way acquisitions. The LOQ shall be prepared by the LPA and must be recommended for approval by the District/Region Right of Way Manager, before being forwarded to the Office.

**Expenditures under Alternatives B or C are not eligible for reimbursement from future STIP funds programmed for the project, if any.** However, when local funds are expended on a Federal-Aid project, consistent with this policy, the capital costs may serve as a "soft match," i.e., credit for the non-Federal match for the remaining Federal-Aid project. The soft match credit will be based on the acquisition cost (unless exception granted for current appraised value) of the portion of the parcel (lands and buildings) actually incorporated into the project. No other typically reimbursable cost, e.g., relocation assistance, loss of goodwill, damages and/or capital support, is included toward the soft match credit.

Strict compliance with this policy is strongly emphasized. It is a Right of Way tool to assist in delivering qualified projects, not a tool for scheduling projects.

If you have any questions concerning this policy, please contact Brice Paris, Chief, Division of Right of Way and Land Surveys, at (916) 654-5075, or Patricia Jones, Chief, Office of Appraisals and Local Programs, at (916) 654-5728.

Attachments: "Check Sheet – Local Agency Request for R/W Acquisition Prior to Final  
Environmental Approval on SHS Projects"  
Acquisition Reference File 02-1

c: Legal – RB Williams, M Ferguson  
Design – M Leja  
Project Management – C Haack  
Local Assistance – T Abbott  
R/W – B Paris, Office Chiefs, P Scott, C Hanson, D Link

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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**Check Sheet – Local Agency Request for Right of Way Acquisition Prior to  
Final Environmental Approval on SHS Projects**

In order to determine if your project is a good candidate for early acquisition and that it meets the criteria for early acquisition, the following events need to have occurred and questions need to be addressed:

- ☐ Reason(s) for early project acquisition request.
- ☐ Date of executed cooperative agreement, if required (if none, explain).
- ☐ Date of Freeway Agreement, if required, or resolution from local governing body.
- ☐ Date environmental studies completed and selection of preferred alternative.
- ☐ Date public hearing held.
- ☐ Groups or individuals in support or opposition of the project.
- ☐ Projected date of final environmental approval.
- ☐ Federal funded project?
- ☐ Federal funding in right-of-way?
- ☐ Project programmed or authorized?
- ☐ FY of right-of-way programming or authorization.
- ☐ Date Relocation Impact Study (s) completed.
- ☐ Estimated project costs by fund type.
- ☐ Estimated right-of-way capital costs.
- ☐ List Proposed Advanced R/W Activities by Parcel No., Dollar Amount, and F.Y. of Expenditure.
- ☐ LPA and Project Manager confirm that R/W expenditures of local-only funds will not exceed project's total available local-only funds.
- ☐ General R/W Project Information:
  - i. Project Description – conventional widening, new alignment, etc.
  - ii. Number of parcels, parcel type and types of acquisitions.
  - iii. Parcels to be avoided until after environmental due to non-recoverable costs (damages, loss of goodwill, RAP, excess costs, etc.)
  - iv. Planned early Railroad parcels and Utility Relocation activities.

Note: Appraisals may be completed during preliminary right-of-way after public notice of the preferred alternate route. Consider appraisal completion as an option to shortening R/W project delivery as opposed to early acquisitions.

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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State of California

Business, Transportation and Housing Agency

DEPARTMENT OF TRANSPORTATION

**M e m o r a n d u m**

*Flex your power!  
Be energy efficient!*

**To:** DISTRICT DIRECTORS

**Date:** December 9, 2002

Attention: Region/District Division Chiefs  
Right of Way  
Project Development  
Planning

**File:** ACQUISITION  
Reference File 02-1  
(Supersedes 00-1)

**From:** BRENT FELKER  
Chief Engineer

**Subject:** Right of Way Acquisition Prior to Environmental Approval - STIP

This memo supercedes Acquisition Reference File 00-1 dated December 28, 2000. It revises and clarifies the approval criteria and specifically excludes partial property acquisitions on new alignments from the current early acquisition process. For qualifying State Transportation Improvement Plan (STIP) projects the early acquisition process is otherwise still available, after the completion of environmental studies and prior to completing the final environmental reports approval, providing all of the other specified criteria has been met.

It is important to remember that early acquisition is a Right of Way (R/W) tool for consideration by R/W Managers to assist them in delivering qualified projects. It is NOT to be a tool for scheduling projects.

Only entire (full take) parcel acquisitions may be approved for early acquisitions on new alignments. Entire acquisitions preserve existing parcel configurations, and do not split existing properties and ownerships. In the event that the project is not constructed as proposed, or is constructed on a different alternative, the California Department of Transportation (Department) is then able to dispose of the entire parcel returning it intact to private ownership. Partial parcel acquisitions may only be approved for existing route widenings or other minor system improvements where there are no viable alternatives under consideration that include a new alignment.

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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Guidelines for Preliminary R/W activities were issued June 9, 1994, (Planning and Management Reference File #94-1) that authorized the completion of appraisals during the Preliminary R/W project stage. Appraisals can be completed after public notice of the preferred alternate route.

The California Environmental Quality Act (CEQA) guidelines, and Title 23 USC amended by TEA 21 provide for an exception to the general rule prohibiting acquisition prior to environmental approval. CEQA Guidelines, Title 14 Section 15004 (b) (2) (A) of the California Code of Regulations state, in part: "...may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." Furthermore, Senate Bill 45 revised Government Code Section 14529, and allows for an allocation for right-of-way acquisition with the completion of the environmental studies, and the selection of a preferred alternative.

Acquisition costs incurred by the State, prior to executing a project agreement with FHWA are not eligible for federal participation. However, Title 23 allows for parcel costs in certain instances to be counted as part of the State's soft match for other project costs.

There are two methods allowed in federal regulation: 1) the direct reimbursement of right-of-way costs; or 2) the soft match of State funds. The soft match allows non-federal expenditures to be considered as the non-federal match for the federal-aid project.

Under the soft match, only land and building costs within the right-of-way are allowed as a credit toward future project costs. All other costs must be segregated and borne by the contributing agency. The Office of Federal Resources in Division of Budgets should be contacted for specific criteria for application of either a Soft Match or Reimbursement.

There are no changes to the State or federal Criteria for Hardship and Protection Acquisitions, and those criteria are not addressed here.

After the completion of the environmental studies, the Department may acquire property prior to environmental approval subject to the following criteria:

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1. **The project must not be controversial.** There must be a determination that the acquisition will not limit the choice of alternatives or mitigation measures, and that the Department has conditioned its future use of the property on CEQA compliance.
2. The project must be programmed in the STIP, and the route adoption must be consistent with the preferred alternative.
3. The preferred alternative has been made public at a Public Hearing or other public forum if a Public Hearing is not required.
4. Freeway agreements if required, or a resolution from the local governing body, must be obtained in accordance with Streets and Highway Codes, Titles 100.1 through 100.4.
5. The design will have progressed sufficiently to be able to accurately convey right-of-way requirements to the Office of Surveys, for preparation of appraisal maps and deeds.
6. The property may not change from its current use. On new alignments acquisitions shall be limited to full takes only. Partial parcel acquisitions are not permitted, except for existing route widening or other minor system improvements. Notices to Owner for utility relocations shall not be issued.
7. Removal of improvements, including utilities, shall only be conducted when public safety is an issue. See R/W Manual, Section 11, for Property Management Procedures.
8. Laws, regulations, policies and procedures including the Uniform Relocation Assistance and Real Properties Acquisition Policies Act, must be followed throughout the acquisition process.
9. Grantors shall be notified that Resolutions of Necessity will not be sought during the early acquisition period. Owner occupants shall be advised of their right to buy back the property at fair market value in the event the property is not used for the proposed project, and they do not relocate (R/W Manual Sec. 16.10.04.00).



**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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10. Federal funding options shall be preserved through compliance with Federal Regulations concerning Early Acquisitions; 23 CFR. 710.501(a) (b) (c).

The Project Manager must ensure that R/W expenditure of State only funds do not exceed the Project's total available programmed funds, Construction and Right of Way, required for the State match.

For planning purposes, District/Region R/W must determine if there is adequate funding capacity to provide State-only funding from their annual CTC Capital allocation.

A Letter of Qualification (LOQ) shall be signed by the District Director documenting how the project meets the criteria set forth in these guidelines. The letter shall also detail the circumstances that warrant early acquisition. The LOQ shall contain signatures of the Region/District Division Chiefs for Project Development, Environmental Planning, and R/W, indicating their concurrence. The LOQ shall thereafter be forwarded to Headquarters (HQ) R/W for review and approval. Documentation will be maintained in the project file.

When the E76's are submitted for right-of-way and construction authorization the District will provide the HQ Federal Resources Officer with a copy of the approved LOQ, and inform the Federal Resources Officer of the amount of the soft match available. E76's shall not include project parcels where first written offers were made prior to environmental clearance and the Finding of No Significant Impact (FONSI) or Record of Decision (ROD).

The attached Early Acquisition Check Sheet should assist in determining if a project qualifies for early right-of-way acquisition. The check sheet can also be found on the Right of Way Intranet site @ <http://row.dot.ca.gov/offices/acquisition/ARF/checksheet.pdf>.

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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I strongly urge you to emphasize to your staff the importance of strict compliance with the early acquisition criteria and its approved application. This is an important project delivery tool, currently available to R/W, and misuse by a district or region could very well result in losing it on a statewide basis.

Attachment: Check Sheet - Request for R/W Acquisition Prior to Final  
Environmental Approval on STIP Projects

c: Legal; BBehrens, RWilliams, MFerguson  
Design; KSutliff  
Environmental; GWinters  
Local Assistance; TAbbott  
Budgets; RSteen  
R/W; BParis, R/W Office Chiefs, DLink

**GUIDELINES FOR LPA EARLY ACQUISITION PRIOR TO  
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**Checksheet - Request for Right of Way Acquisition Prior to Final  
Environmental Approval on STIP Projects**

In order to determine if your project is a good candidate for early acquisition and that it meets the criteria for early acquisition the following events need to have occurred and questions need to be addressed.

- ☐ Reason(s) for early project acquisition request.
- ☐ Date environmental studies completed.
- ☐ Date Draft Environmental document was circulated.
- ☐ Date public Hearing was held.
- ☐ Groups or individuals in support or opposition of the project?
- ☐ Projected ROD date.
- ☐ Federal funded project - Right of Way?
- ☐ FY of project programming.
- ☐ FY of Right of Way programming.
- ☐ Date of Route Adoption.
- ☐ Date Freeway agreements if required, or Local's resolution agreeing to acquisitions.
- ☐ Date Relocation Impact Study (s) completed.
- ☐ Estimated Right of Way project Capital Cost\_\_\_\_\_.
- ☐ Estimated additional State only Capital funding requirements\_\_\_\_\_.
- ☐ Project Manager confirms that R/W expenditures of State only funds will not exceed project's Programmed funds required for federal match?
- ☐ List Proposed Advanced R/W Activities by Parcel No., Dollar Amount, and F.Y. of Expenditure.
- ☐ General R/W Project Information:
  - i. Project Description – conventional widening, new alignment, etc.
  - ii. Number of parcels, parcel type and types of acquisitions?
  - iii. Parcels to be avoided until after environmental due to non-recoverable costs (damages, goodwill, RAP, excess costs, etc.)
  - iv. Planned early Railroad parcels and Utility Relocation activities.

Guidelines for Preliminary Right of Way Activities that authorized the completion of appraisal during the preliminary right of way project stage were previously issued June 9, 1994, (Planning and Management Reference File #94-1). Appraisals can be completed after public notice of the preferred alternate route. Consider appraisal completion as an alternative tool to shortening R/W project delivery as opposed to early acquisitions.